

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**JAN BYRNE,**

**Plaintiff,**

**v.**

**ALABAMA ALCOHOLIC BEVERAGE  
CONTROL BOARD, and  
EMORY FOLMAR, in his individual  
and official capacities,**

**Defendants.**

**CASE NO. 2:06-CV-1084-WKW**

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**MOTION BY DEFENDANT EMORY FOLMAR TO DISMISS  
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF  
CAN BE GRANTED OR, IN THE ALTERNATIVE, FOR A  
MORE DEFINITE STATEMENT**

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COMES NOW Emory Folmar, a named Defendant in the above-styled cause sued in his individual capacity and in his official capacity, and moves this Honorable Court to dismiss this action with prejudice, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief may be granted.

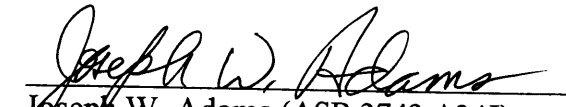
In the alternative, Defendant Folmar moves this Honorable Court for an Order requiring the Plaintiff to make a more definite statement, pursuant to Rule 12(e) of the Federal Rules of Civil Procedure.

The grounds for this Motion, which are discussed more fully in the accompanying Memorandum, are that Defendant Folmar is immune from damages liability in his individual

capacity under 42 U.S.C. § 1983 for his performance of discretionary functions; that no action may be maintained under § 1983 against Defendant Folmar in his official capacity as Administrator of the Alabama Alcoholic Beverage Control Board, as such an action is effectively against the Board or the State of Alabama; and that Plaintiff's Complaint fails to assert claims under § 1983 and Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e et seq.) with the required specificity.

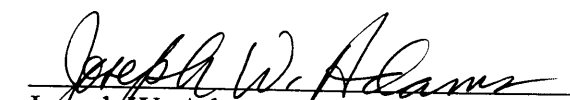
WHEREFORE, Defendant Emory Folmar moves this Court to dismiss this action due to the Plaintiff's failure to state a claim upon which relief can be granted or, in the alternative, to order the Plaintiff to make a more definite statement and for such other, further, or different relief to which Defendant Folmar may be entitled.

Respectfully submitted this 29<sup>th</sup> day of December, 2006.

  
Joseph W. Adams (ASB 3743 A34J)  
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#### **CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing on Jay Lewis, at Post Office Box 5059, Montgomery, AL 36103, Attorney for Plaintiff, on this 29<sup>th</sup> day of December, 2006, by placing a copy of the same in the United States mail, properly addressed and with postage prepaid.

  
Joseph W. Adams (ASB 3743 A34J)  
Attorney for Defendants